

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHERYL KATER and SUZIE KELLY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation, and BIG FISH
GAMES, INC., a Washington corporation,

Defendants.

Case No.: 2:15-cv-00612-RBL

**DECLARATION OF DAVID
GROSSMAN IN SUPPORT OF
DEFENDANTS' REQUEST TO
STRIKE PLAINTIFFS' MOTION
FOR RECONSIDERATION AND
OPPOSITION TO PLAINTIFFS'
MOTION TO STAY**

MANASA THIMMEGOWDA, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington
corporation; ARISTOCRAT
TECHNOLOGIES INC., a Nevada
corporation; ARISTOCRAT LEISURE
LIMITED, an Australian corporation; and
CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation,

Defendants.

Case No.: 2:19-cv-00199-RBL

**DECLARATION OF DAVID
GROSSMAN IN SUPPORT OF
DEFENDANTS' REQUEST TO
STRIKE PLAINTIFFS' MOTION
FOR RECONSIDERATION AND
OPPOSITION TO PLAINTIFFS'
MOTION TO STAY**

1 I, David Grossman, hereby declare as follows:

2 1. I am the Senior Director of Engineering at Big Fish Games, Inc. (“BFG”).
3 I have been employed by BFG since October 2012. My responsibilities as Senior Director of
4 Engineering include supporting general engineering and product development efforts at BFG. I
5 make this declaration based on my personal knowledge and, if called as a witness, I could and
6 would competently testify thereto.

7 2. On December 30, 2019, BFG began surfacing an in-game overlay, or
8 “pop-up,” to Big Fish Casino users. In the ordinary course of exercising my responsibilities as
9 Senior Director of Engineering, I helped to implement the December 30 pop-up.

10 3. The December 30 pop-up includes language that I understand was
11 approved by the Court in its December 19, 2019 Order. Specifically, the pop-up states:

12 Big Fish Games’ [Terms of Use](#) include a “Dispute Resolution By
13 Binding Arbitration” provision requiring individual arbitration of
14 any dispute and waiving the right to participate in any class action
15 lawsuit or other representative proceeding. By clicking the button
16 below or continuing to access the game, you agree to the Terms of
17 Use. However, you may opt out of the Dispute Resolution
18 provision by mailing written notice to the Big Fish Games Legal
Department within 30 days of accepting the Terms of Use. This
opt-out procedure is detailed in the Terms of Use, available [here](#).
If you have questions about the legal effect of the Terms of Use,
you should contact an attorney.

19 There are two pending lawsuits in federal court in Tacoma,
20 Washington relating to Big Fish Casino. These lawsuits assert
21 claims under Washington law, including the Recovery of Money
22 Lost at Gambling Act and the Consumer Protection Act. The
23 lawsuits seek to recover money allegedly lost while playing Big
24 Fish Casino. Big Fish Games denies the claims and believes they
25 have no merit. The court has not yet decided who is right or
26 whether the lawsuits can proceed as class actions. The individual
27 named plaintiffs in these lawsuits are represented by attorneys at
28 the law firm Edelson PC, who may be contacted at 800-347-5750.
If you accept the Terms of Use and do not opt out of the Dispute
Resolution provision, you cannot participate in these lawsuits, even
if a class is certified.

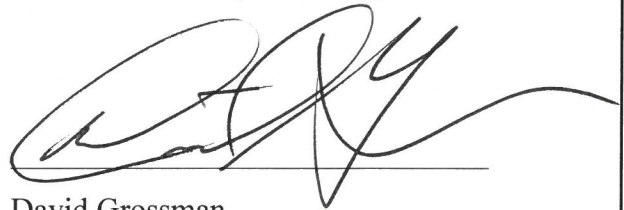
1 4. The bolded and underlined text in the pop-up indicates the presence of a
2 hyperlink. Clicking that hyperlink opens for the user a copy of the August 28, 2019 BFG Terms
3 of Use.

4 5. The original text of the December 30 pop-up is size 16-point font. On
5 certain devices, the pop-up is scaled to fit to the device screen, which may cause the text size to
6 appear smaller.

7 6. For less than 90 minutes during the afternoon of January 21, 2020, BFG
8 inadvertently displayed an incorrect version of the pop-up to certain Big Fish Casino users.
9 When this mistake was brought to BFG's attention, BFG immediately ceased display of the
10 incorrect version of the pop-up.

11
12 I declare under the penalty of perjury under the laws of the United States that the
13 foregoing is true and correct. This declaration is executed this 21st day of January, 2020,
14 in Oakland, California.

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A handwritten signature in black ink, appearing to read 'David Grossman', is written over a horizontal line.

David Grossman